

REMARKS

Claims 1-48 are currently pending in the subject application and are presently under consideration. Claims 18-48 are Previously Presented as shown on pages 5-12 of the Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Restriction Requirement under 35 U.S.C. §121

The Examiner requires restriction to one of the following eleven groups:

Group I – Claims 1-17 are drawn to device analyzer, a human machine interface, a communication component and a processing component that renders, classified in class 706, subclass 60;

Group II – Claims 18-23 are drawn to device analyzer, an identification component, an artificial intelligence component, a communications component, and a processing component classified in class 706, subclass 60;

Group III – Claims 24-28 and 41-44 are drawn to converting 3 dimensional data into 2 dimensional data or vice versa and displaying the data in disparate views, classified in class 706, subclass 60;

Group IV – Claims 29-32 are drawn to a software object that determines properties, limitations, or software plug-ins, a human machine interface generator, and a communications component, classified in class 706, subclass 60;

Group V – Claims 33-34 are drawn to determining formatting requirements, formatting data, delivering the formatted data, classified in class 706, subclass 60;

Group VI – Claim 35 is drawn to receiving data from a physical device to a human machine interface, comparing format of the data to known formats, rendering data, classified in class 706, subclass 60;

Group VII – Claims 36 and 45 are drawn to mapping data path information, determining I/O communication protocol of the physical device, formatting data in accordance with the device properties, creating one or more software objects, classified in class 706, subclass 60;

Group VIII – Claim 37 is drawn to determining properties, limitations, or software plug-ins of the devices, means for delivering the formatted data, classified in class 706, subclass 60;

Group IX – Claim 38 is drawn to ascertaining formatting requirements, properties, limitations or software plug-ins, determining whether a format of data is known, determining the format of unknown data received by a Human Machine Interface, rendering the data in the HMI, mapping data path information to data delivered to the physical device, classified in class 706, subclass 60;

Group X – Claims 39 and 46-48 are drawn to mapping data path information to data delivered to the device, generating at least one software object, formatting data in accordance with determined properties, creating software objects that represent Input/Output interface of devices, classified in class 706, subclass 60;

Group XI – Claim 40 is drawn to determining properties, limitations, or software plug-ins associated with devices, presenting 3-dimensional data as 2-dimensional data or vice versa, displaying data in a plurality of disparate views, associating respective views with a zoom level, classified in class 706, subclass 60.

Applicants' representative respectfully requests withdrawal of the restriction requirement under 35 U.S.C. §121 for at least the following reasons. The restriction requirement is improper under M.P.E.P. §803.

"If the search and examination of all the claims in an application can be made without serious burden, *the examiner must examine them on the merits*, even though they include claims to independent or distinct inventions" (emphasis added). M.P.E.P. §803. The test for restriction between patentably distinct inventions is two-part in nature. First, the inventions must be independent or distinct as-claimed. *See* M.P.E.P. §803(I)(A). Second, examination of the claims must present a serious burden on the Examiner if no restriction is required. *See* M.P.E.P. §803(I)(B). *See also* M.P.E.P. §808. The claims as presented do not meet either prong of the test to require a restriction.

Addressing the second prong, examination of the claims does not impose a serious burden on the Examiner. As the Office Action dated September 15, 2009 notes, all 11 identified groups fall into the same classification (class 706, subclass 60). To this end, search and examination related to the subject claims will not significantly increase the Examiner's duties relating to this application.

The Office Action contends that requiring restriction is proper as "the inventions require different field of search" (Office Action dated September 15, 2009, page 3), citing M.P.E.P.

§805.05. However, M.P.E.P. §805.05 is inapposite to restriction based on field of search. In addition, all claim groups exist in the same field of search, as they share the same class and subclass.

In order to show the increased burden of examination, the Examiner must set forth reasons for the restriction requirement. M.P.E.P. §808.02. This showing can be made by explaining the separate classifications of claim groups, a separate status in the art of claim groups, or differing fields of search. M.P.E.P. §808.02(A)-(C). While the Office Action asserts the elements of this test, the assertions are conclusory, without explanation or support. Thus, no showing of increased examination burden is made in the Office Action. Because there is no serious burden examining all the claims, Applicants should be entitled to an examination of the claims as presented on the merits.

In addition, returning to the first prong of the test outlined *supra*, the invention as-claimed does not embody multiple distinct inventions. “Where, as disclosed in the application, the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 U.S.C. §121 is never proper.” M.P.E.P. §808.02. The subject application relates to services for providing flexible and powerful Human Machine Interfaces (HMIs) for industrial control systems. These HMIs are flexible in that they overcome the limitations of discrete legacy systems which lack compatibility among one another in part or whole. The independent claims all recite systems or methods generally directed toward this subject matter, and are disclosed as related in the application. Thus, the claims do not meet the standard for patentably distinct groups set forth in M.P.E.P. §808.02.

As with proving increased burden of examination, the Examiner must detail reasons regarding any conclusion of distinct inventions. “The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. *A mere statement of conclusion is inadequate.* The reasons upon which the conclusion is based should be given.” M.P.E.P. §808.01. No such reasons are provided in the Office Action, and the assertion of distinct inventions is conclusory at best. Therefore, election to one of the identified claim groups cannot be required.

Finally, an 11 way restriction requirement to a group of 48 commonly related claims is simply unreasonable, and places an unreasonable financial burden and prejudice on Applicants not contemplated by the patent laws.

In view of the foregoing, it is apparent that the previously presented claims do not impose a substantial examination burden on the Examiner or recite multiple distinct claim sets. Accordingly, this restriction requirement is improper. Applicants' representative thus respectfully requests withdrawal of this requirement to restrict.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [ALBRP314US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,
TUROC & WATSON, LLP

/Thomas E. Watson/
Thomas E. Watson
Reg. No. 43,243

TUROC & WATSON, LLP
57TH Floor, Key Tower
127 Public Square
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731